

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE:

WILLIAM HENRY TANNER, JR.

Debtor(s)

CASE NO. 20-03603-5-DMW

Chapter 13

RESPONSE TO MOTION TO IMPOSE AUTOMATIC STAY

NOW COMES SN Servicing Corporation, servicing agent for U.S. Bank Trust National Association, as Trustee of the Cabana Series IV Trust ("Lender"), by and through its undersigned attorney, and responds to the Debtor's Motion to Impose the Automatic Stay filed herein as grounds therefore respectfully shows as follows:

1. On or about November 9, 2020, the Debtor filed this current petition seeking relief under Chapter 13 of the Bankruptcy Code.
2. On or about August 28, 2006, the Debtor obtained a mortgage loan now held by Lender in the original principal amount of \$136,000.00 (the "Note"). The Note was subsequently modified effective May 1, 2016, modifying the interest rate and maturity date and re-capitalizing \$40,820.72 worth of past due payments and other charges.
3. The Note is secured by a deed of trust against the Debtor's real property located at 3812 Sue Ellen Drive, Raleigh, NC 27604 (the "Property"). Upon information and belief, the Property serves as the Debtor's residence.
4. Prior to the filing of this Bankruptcy case, the Debtor had two pending Chapter 13 cases within the past year: Chapter 13 case filed April 20, 2020, Case #: 20-01622-5-DMW, dismissed for failure to make payments on September 23, 2020; and, Chapter 13 case filed October 22, 2018, Case #: 18-05161-5-DMW, dismissed for failure to make payments on February 21, 2020.
5. The Debtor is in substantial default under the terms of the Note and Deed of Trust for failure to make payments when due. According to the proof of claim filed on behalf of Lender in the Debtor's previous Chapter 13 case, the Debtor was past due for the December 1, 2017 payment and all subsequent payments due thereafter and the total pre-petition arrearage claim was \$23,648.59. Lender received no payment in the previous bankruptcy case.
6. Both before and in between the two previous bankruptcy cases, Lender or its predecessor in interest was proceeding with foreclosure - each of the three most recent bankruptcy cases was filed on the eve of a scheduled foreclosure sale.
7. The Debtor has not filed schedules in the present case, so Lender is unable to determine if the Debtor can prove a substantial chance in his financial or personal affairs since the dismissal of the most previous Chapter 13 case and the Motion to Impose the Automatic Stay only make vague references to new work and rental income.

8. Lender alleges that the filing of this current Chapter 13 case is not made in good faith as it does not appear that the Debtor can demonstrate any change in his financial affairs that would ensure a successful completion of any Chapter 13 Plan.

WHEREFORE, Lender prays the Court as follows:

1. That the Court deny the Debtor's motion to impose the automatic stay and that the Court enter an order confirming that the automatic stay did not go into effect upon the bankruptcy filing date in this current case as to the Property and Lender, and its successors, agents and assigns.

2. That Lender be allowed its reasonable attorney fees and costs incurred in connection with this Response; and,

3. For such other and further relief as the Court deems just and proper.

DATED: November 16, 2020

/s/ Christine M. Lamb
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CERTIFICATE OF SERVICE

The undersigned certifies that this day the pleading or paper to which this Certificate is affixed was served upon the person(s) listed below by mailing a copy of the same, properly addressed and postage prepaid via the United States Postal Service.

William Henry Tanner, Jr.
3812 Sue Ellen Drive
Raleigh, NC 27604

The following parties were served electronically:

Travis Sasser, Attorney for Debtor(s)

John F. Logan, Chapter 13 Trustee

DATED: November 16, 2020

/s/ Christine M. Lamb
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